

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 212 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements ? YES
2. To be referred to the Reporter or not ? NO

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3. Whether Their Lordships wish to see the fair copy of the judgement ? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder ? NO
5. Whether it is to be circulated to the Civil Judge ? NO

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STATE OF GURJAT

Versus

VANAND GIRDHAR BECHAR & 12 OTHERS

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Appearance:

Mr.SA PANDYA,PUBLIC PROSECUTOR for Appellant.  
MR IM KAPOOR for MR.PN BAVISHI for Respondents.

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CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 06/09/96

ORAL JUDGEMENT

This appeal by the State of Gujarat is directed against the impugned judgment and order dated 18-1-1989, rendered in Criminal Case No. 976/86, by the learned JMFC Manavadar, wherein the respondent-Vanand Girdhar

Bechar and 12 others, who came to be tried for the alleged offences punishable under sections 4 and 5 of the Prevention of Gambling Act, 1987,, were at the end of the trial ordered to be acquitted.

2. According to the prosecution, on receipt of the information on 28-1-1986 at 22-00 hrs. ASP Tirthraj alongwith his staff members raided the house of Vanand Girdhar Bechar, where Mer Sarman Malde and other-accused were found gambling. Immediately the search was carried out and the money to the tune of Rs.4900/- were seized. After the investigation was over, the accused came to be chargesheeted to be tried for the aforesaid alleged offences before the learned JMFC Manavadar.

3. At trial, the respondents pleaded not guilty and claimed to be tried, and ultimately came to be acquitted as stated above in para one of this judgment, giving rise to this appeal by the State.

4. Heard Mr.S.A.Pandya, the learned APP appearing for the appellant-State and Mr.I.M.Kapoor, the learned advocate appearing for the accused. On calling upon the learned APP to point out as to how the impugned judgment and order of acquittal was perverse or in any way unreasonable calling for the interference by this court, the learned APP making feeble attempt to reverse the same, submitted that quite a huge amount was found and why indeed the police officer should give a false evidence before the Court !! Now no doubt, it is true that merely because the prosecution case hinges upon the evidence of the police officers, that does not mean that the conviction can not be recorded thereupon, but at the same time, looking to the infirmities highlighted in the impugned judgment and order, it is indeed not possible to say that the view taken by the trial court is erroneous. We have gone through the evidence of the panch witnesses one of them PW-1 Khimji Soma has been declared hostile, but so far as the second Panch PW-4 Tekchand is concerned, though he has not fully supported the prosecution, yet he is not declared hostile !! Under such clumsy set of affairs of the evidence, to reverse the order of acquittal would be little risky and inexpedient and in that view of the matter, there is no alternative left with this court but to confirm the impugned order of acquittal. This is one of those cases where a good case came to be lost because of the proper care not taken by the Investigating Agency while giving evidence before the court. What on earth prevented the Investigating Agency to produce the original copy of the warrant and instead rest contented with a carbon copy !!

If the Investigating Agency and the PP are efficient enough to conduct the trial, the prosecution will secure the better results. In the instant case, required care is not taken and it is here the State fails, sacrificing the public interest. In view of the aforesaid discussion, there is indeed nothing on the basis of which the order of acquittal can be reversed.

5. In the result, this appeal fails and is dismissed. The office is directed to send a copy of this judgment to Mr. H.M.Dholakia, the learned JMFC wherever he is at present.

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